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ABSTRACT

Three lectures on law enforcement are presented that were prepared for study purposes at Johnson County Community College. The first lecture examines the fundamental ideas of the Age of Enlightenment and discusses their influence on the American Revolution, the United States Constitution, and the Bill of Rights. Major provisions of the Bill of Rights are summarized and the reasoning that resulted in its creation is analyzed. Finally, the relationship between the law, law enforcement, and the courts is illustrated with a summary of a court case. After discussing the secularization of the authority behind the law, the second lecture uses the history of vagrancy laws in England and the United States to illustrate how the law changes over time with differing social and economic conditions. The third lecture compares the histories of the London Metropolitan Police Force and the American urban police. Particular emphasis is placed on the differing constituencies from which these forces derive their authority and on the differing roles they play in their respective judicial systems. Each lecture is followed by study questions and a bibliography. The first two also include court cases for possible consideration and other suggested course activities. (JP)

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LECTURES ON LAW ENFORCEMENT

by

Lois Nettleship

Spring, 1979

Johnson County Community College

JC 790 627

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STATEMENT OF SOURCES

These lectures were written for classroom presentation. They have not been footnoted. There is a bibliography at the end of each lecture, listing its sources. Readers who are interested in following up this material are referred to the bibliographies.

Lois Nettleship

BILL OF RIGHTS

ENLIGHTENMENT BACKGROUND

The Constitution of the United States grew out of ideas prevalent during the Age of Enlightenment, a period from the 1680s to 1800, so called by historians because of its emphasis on human reason. The framers of the Constitution believed that by using his God-given powers of reason, man could understand the laws of nature and of politics which they believed were universal. They were the intellectual heirs of John Locke, the English philosopher who believed that man's mind was a tabula rasa (a clean slate) which formed ideas on the basis of sense perceptions. Thus, men held ideas on the basis of their perceptions of nature, and nature, in turn, was governed by universal laws, laws which would be known to man by using his powers of reason. Such enlightenment beliefs were influenced by the scientific discoveries of the age and especially those of Sir Isaac Newton, who formulated such universal scientific laws as gravity and motion. If science could uncover the universal laws of nature by reason acting upon sense perceptions, then surely political systems could embody similar laws of nature as they pertained to men's relations with each other and with their governments. Locke, in fact, put forward a theory of government based on contract; that is, man freely enters into an agreement with those who govern him to exchange a portion of his liberty for a just government which secures order without resort to tyranny. If the government does not abide by the contract, then the individual is free to break the contract. This put the basis of government on man's consent and upon the execution of mutually agreed upon obligations, rather than upon divine right which had earlier been the source of legitimacy for governments. Enlightenment thought thus held:

1. That there were universal laws governing nature (science) and man (politics);

2. That these could be known by man through sense perceptions understood by reason;
3. That these must be embodied in society by means of social contracts which protect the natural rights of the individual (most importantly his right of property and his civil liberties); and
4. If governments did not protect the individual's "natural rights," that government should be dissolved.

Enlightenment ideas reflected optimism, confidence in a just and benign nature, in the power of man's reason, and in the importance of manners and appropriate forms to express a harmonious and rational society. These ideas are expressed in the writings of Thomas Jefferson and the other founders, in the efforts of Diderot to compile all the knowledge of the world in an encyclopedia (this was also the period in which the Encyclopedia Britannica was compiled), and in the music of Mozart and Haydn which is harmonious, well proportioned and confident.

IMPACT OF ENLIGHTENMENT IDEAS ON LAW AND GOVERNMENT, ON THE UNITED STATES CONSTITUTION

If the universe were a machine governed by laws which man was capable of understanding (as enlightenment thinkers believed), then societies of men should also be governed by laws which were known to men and which men found "reasonable." (Such expressions as "naturally" and "of course" suggest the importance of imagery based on nature and natural law at this time.) No laws should be secret. No laws should be arbitrary. No laws should give governments undue power over the individual. Governments derive their power from the governed. These ideas were the consequence of the enlightenment ideas described above. Thus, churches which depended primarily on faith (and not reason), on ceremony, and on secret knowledge were criticized by enlightenment thinkers. Likewise, enlightenment thinkers like Cesare Beccaria (author of <u>On Crimes and Punishments</u>,

1764) criticized medieval law, dungeons and torture on the grounds that laws, "which . . . ought to be compacts of free men, have been . . . a mere tool of the passions of some." He believed that the individual and the social contract were undertaken for the good of the individual and not for the good of the state, or for the good of the few.

The American Revolution expressed a similar idea by arguing that the British King and Parliament had been tyrannous in depriving the colonists of their rights as Englishmen (most importantly, their right of representation) and by imposing taxes upon them without their consent. The Declaration of Independence lists these grievances and other actions by the King and Parliament which the colonists took to be the exercise of arbitrary power, and thus justification enough for the American break with the British. (Note in the Declaration of Independence the use of enlightenment phrases such as, "Course of human events," "Laws of Nature and of Nature's God," and "We hold these truths to be self-evident,"--all indicating that there is a natural order obvious to all men, an order which the British have presumably violated.)

After the American Revolution, the Articles of Confederation were established as the basis for the national government. Suspicious of strong central power after their experience with the British, the Americans gave little power to the Confederation government and reserved most governmental powers to the individual states. Such a system was weak and proved to be inadequate for the circumstances facing the new nation. As a result, a constitutional convention was called in 1787 to form a new basis for the national government, one which would give it sufficient power to function effectively yet would protect the rights of the individual. The problem facing the framers of the Constitution was how to form a government strong enough to be effective while not so powerful as to be a tyranny.

The framers of the Constitution attempted to solve this problem in two ways:

1. The powers of governments were to be limited and divided (or balanced) among three branches: the executive (president), the legislative (Congress) and the judicial (court system). Each branch would have certain limited powers as well as some power to check the workings of the other two branches. An instance of this system of checks and balances is the presidential veto. Only Congress can pass laws, but the president can veto bills passed by Congress. Two thirds of the Congress can, however, override the presidential veto. There are dozens of similar divisions and checks in the Constitution.
2. The Bill of Rights was added to the Constitution as the first ten amendments in 1791. (In fact, the assurance that these amendments would soon be added to the Constitution gave the supporters of the Constitution enough votes for ratification.) Many thought the addition of the Bill of Rights (modeled to some extent on the English Bill of Rights) necessary in order to protect the rights of the individual and of the states. Otherwise, they feared, the federal or national government could easily become a tyranny.

Before actually looking at the Bill of Rights, it is important that we remember that the memory of British oppression was still vivid in the minds of the Americans, and they wanted to be sure that a similar situation did not occur in their new nation. In other words, the founders were not acting out of abstract notions unrelated to the real world. They were attempting to prevent abuses which they themselves had experienced and which as optimistic thinkers of the enlightenment they believed could be prevented by their actions.

THE BILL OF RIGHTS

What do the Bill of Rights provide for? Simply put, the Bill of Rights provides for the following:

1. No law of Congress shall prevent an individual from exercising freedom of speech, of the press, of the right to assemble peaceably and to petition Congress to redress grievances. In addition, Congress shall make no law establishing a religion or prohibiting the exercise of any religion.
2. The right of the states to raise a militia shall not be abridged by Congress.
3. No troops shall be quartered in an individual's house without his consent.
4. There shall be no searches and seizures of the individual's home and personal effects without a warrant, and no warrant shall be issued unless probable cause shall be shown.
5. No person shall be deprived of life or property or liberty without due process of law, nor indicted of a capital crime without the findings of a Grand Jury, nor made to testify against himself, nor have his property taken without just compensation; no person shall be placed in double jeopardy.
6. In all criminal prosecutions the accused shall be entitled to trial by jury, to a speedy trial, to know the accusations against him, to be confronted by his accusers and to have the right of defense counsel.
7. In suits of common law, the right of trial by jury shall be preserved.
8. No excessive bail shall be required, nor cruel and unusual punishment inflicted.
9. All rights not specifically enumerated in the Constitution shall

reside in the people

10. All powers not delegated to the federal government nor denied to the states shall be reserved to the states or to the people.

The Bill of Rights is based on the assumption that governments by their nature have more intrinsic power than any private individual or group of private individuals. For this reason, it is necessary to safeguard the rights of the individual in the face of strong governmental power. The police are an arm of government; as such they possess more intrinsic power than any private individual, and as such, their use of power must be curbed as much as any other arm of government, perhaps even more so, since the police carry weapons and have the power of life and death over an individual. The police are subject to the laws laid down by the Constitution (and the Bill of Rights) because the Constitution is the supreme law of the land (as interpreted by the courts), and through the 14th amendment (1868) all other laws on the state and local level must be consistent with it. As such, the local police forces are subject to the federal Constitution although they do not constitute a federal force. The parts of the Bill of Rights which most pertain to the police are amendments one, four, five, six and eight. All of these amendments are expressly written with the intention of protecting the individual against the exercise of arbitrary power. They were not written with the intention of making police work easier or more efficient. As far as the framers of the Constitution were concerned, it was more important to protect the individual than to help the government operate efficiently. The founders had seen the British abuse their rights in the name of imperial efficiency and imperial interest, and they did not want American governments to do the same. As Melvyn Zarr points out,

> There is a real tension in our society between the need for more effective police work . . . and our constitutional aversion to a police state. . . . This tension is part and parcel of every

> civilized society; each is obliged to strike its own balance between security and liberty. . . .
>
> Our Bill of Rights--our balance--was struck in reaction to the balance struck in 18th century England. That society opted for order . . . by punishing hundreds of crimes by death and empowering its constabulary to search and seize at will under the authority of general warrants.
>
> To the framers of our Constitution, liberty was poorly weighted in that balance. They recognized the tendency of even well-meaning officials, once caught up in the excitement of pursuit of suspected criminals, to use whatever short-cut seemed most effective and to ignore the liberties of the citizenry. The police cure, they thought, could often be worse than the social ill.
>
> Accordingly, the framers built into our Constitution principles to protect the liberties of United States citizens. . . . They were devised as restraints on official action. They were frankly acknowledged not to make crime fighting any easier; other interests in addition to police efficiency were sought to be protected. Accordingly, a Bill of Rights was framed which embodies a profound national commitment to keep the police within our control.
>
> . . . The Bill of Rights imposes limits on the power of a policeman to stop a person from speaking or picketing, or arrest his freedom of movement, or search his person or home, or subject him to questioning. That the effect of these limitations may be to restrain policemen in their pursuit of suspected criminals cannot justify their abandonment. In our society, the Bill of Rights settled that." (Zarr, pp. 1, 2, see bibliography.)

In any society there will be conflicts between the need for liberty and the need for security, and the Bill of Rights is not a self-explanatory guide for behavior in every possible situation which may arise. That is why the courts must interpret the meaning of the Constitution in a particular case, according to the situation at hand. And the Supreme Court has the power to declare a particular law unconstitutional (the power of judicial review). This need for interpretation indicates that our legal system is not dead, but a living and changing thing. The police as enforcers of the law are obliged to follow the law as it is interpreted by the courts, otherwise they arrogate to themselves the powers of making and interpreting laws, powers which the federal and state constitutions have expressly given to the legislatures and courts. As <u>enforcers</u>

of the law in our society, the police must take their lead from the legislatures and courts as to what the law is.

Take the following case (discussed in Zarr): A woman was raped and called the police. She could not identify her attacker other than his color. She said he was Black. The police found fingerprints, and thereupon rounded up all Blacks in the area for fingerprinting and questioning. Some seventy Blacks were rounded up solely on the basis of their color. One of the seventy was found to have fingerprints matching those taken at the woman's house. He was convicted. But the Supreme Court of the United States threw out the case on the grounds that police procedure violated the fourth amendment which forbids this sort of dragnet arrest and the violation of the rights of the people picked up and held by the police. If the police had followed the correct procedure, they would have obtained a warrant for an arrest of a particular person by showing the judge that there was probable cause to think that that person was guilty of the crime. As Zarr points out, "The decision [of the Supreme Court] would be unexplainable were the sole object of our society for the police to get their man." But as we have discussed above, that is <u>not</u> the sole object of our society, and if it were we would not need a constitution at all; we would not have needed to have a revolution; we could just unabashedly declare our nation to be a police state as have many other states (Rumania, Yugoslavia, the USSR, to name a few). To the extent that we are a nation based upon law, which in turn is made by our legislature and interpreted by our courts, we must abide by those laws.

CONCLUSION

The Bill of Rights grew out of the following:

1. Enlightenment ideas about the rational powers of man and men in society, and the consequent need for rational and not arbitrary laws.

2. Fear of a government so powerful that it can readily tyrannize its people.
3. Belief that government by its nature is more powerful than any private individual or group of individuals and therefore must be curbed. (This includes the police as an arm of government.)
4. Vivid memories of the abuses of the British government during the eighteenth century.

While many things have changed since the eighteenth century when the U.S. Constitution and the Bill of Rights were written, our society still accepts the basic underlying values they embody. The courts are charged with the responsibility of updating the laws to meet the circumstances of our day, but in ways that are consistent with the original intention of the Constitution and Bill of Rights. We still seem to prefer this kind of society (a society of laws made by the representatives of the majority) to a police state or a tyranny. The police are charged with the responsibility of enforcing the law and not originating it. As such, they must be bound by the legislatures and courts. Otherwise our society will have "street justice" rather than justice by law. Moreover, the police are themselves citizens of the United States and often times not the most privileged members of the society at that. As such they too are protected by the Constitution, and any abuses which wear down the rights of the individual as against the state wear down their rights as well.

QUESTIONS

1. Describe the main ideas of the Enlightenment.
2. Describe the impact of Enlightenment ideas on the American Constitution.
3. Summarize the major provisions of the Bill of Rights. How do these provisions protect the individual and the states against the power of the federal government?

4. Why did the Supreme Court throw out the conviction of the rapist as described above? Do you think this was justified? Why or why not?

5. What is meant by a "government of laws"? How does this differ from a "police state"?

CASES OF INTEREST

Davis v. Mississippi (394 U.S. 721, 1968)
Case involving arrest and fingerprinting without a warrant.

Edwards v. South Carolina (372 U.S. 229, 1963)
Case involving legality of "breach of peace" law.

Gregory v. Chicago (394 U.S. 771, 113, 1969)
Case involving legality of "loitering" law.

Miranda v. Arizona (384 U.S. 436, 1965)
Case involving police interrogation.

Street v. New York (394 U.S. 576, 1969)
Case involving "freedom of speech" protection of the First Amendment.

Terry v. Ohio
Case involving police frisking.

U.S. v. O'Brien (391 U.S. 367, 1968)
Case involving draft card burning.

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A highly readable text with an excellent section on the police dealing with conflicts between the police and the public, particularly as pertaining to the Bill of Rights.

Brant, Irving. The Bill of Rights: Its Origin and Meaning.

A very fine history of the Bill of Rights tracing its ideas back to the Magna Carta. A full and excellent treatment of the subject with many references to pertinent cases.

Kelly, Alfred H. and Winfred A. Harbison. The American Constitution: Its Origin and Development.

The classic text on the history and development of the Constitution. It is very detailed and includes discussions of numerous cases. It is not the sort of book to read from cover to cover, but to refer to for particular ideas or cases. Excellent bibliography and table of cases.

Reitman, Alan (ed.). The Pulse of Freedom: American Liberties, 1920-70's.

An interesting collection of essays by noted historians and constitutionalists on developments in constitutional law during the past fifty years.

Veysey, Laurence (ed.). Law and Resistance: American Attitudes Toward Authority.

A selection of essays by well-known writers such as H. D. Thoreau, George Bancroft and O. W. Holmes. The essays all deal with different problems related to law and authority. It has a particularly interesting introduction by Veysey.

Zarr, Melvyn. The Bill of Rights and the Police.

An excellent study of how the police are influenced in their day to day work by the Bill of Rights, and why the author thinks this is necessary. It has many practical discussions of extreme interest to policemen. It is highly readable and balanced. Much of my lecture is based on ideas from this book. There is an appendix with court transcripts on two cases of interest.

THE HISTORY OF VAGRANCY

HOW THE AUTHORITY BEHIND LAW WENT FROM GOD TO NATURE TO MAN AS SOCIETY BECAME INCREASINGLY SECULAR

Before 1700 (approximately), law was thought to be based upon God's will as revealed through the Bible, canon law, and Church tradition as interpreted by the prophets and Church councils. Why should man obey such laws? If he failed to obey them, he would unleash the wrath of God, leading either to his own perdition or the destruction of his nation.

One major law of God, revealed through the Bible (most particularly through St. Paul's letter to Corinthians I) and institutionalized in the middle ages (1000 to 1400 AD) was the injunction to give charity. Medieval society was full of religious houses of rest and worship such as monasteries, hospitals (originally a house of rest for pilgrims and travellers supported by monastic orders from which such words as hostel, hotel and hospes as well as our modern term hospital are derived) and convents which were supposed to follow St. Paul's concept (I Corinthians 13:13) "And now abideth faith, hope, charity, these three; but the greatest of these is charity," by giving charity (free room and board) to pilgrims, wanderers and the poor who appeared at their doorstep. Begging itself was a legitimate part of Christian life in the middle ages, and several orders of friars as well as crusaders and pilgrims often depended on the charity of others for their sustenance.

From about 1700 to 1800 in western Europe and the United States nature as seen and understood by rational man was thought to be the authority behind law, rather than the active God pictured earlier. Law was to be followed because it was "reasonable" to man when he used his powers of reason and observed the universe around him. The same spirit which led to the formulation of universal

scientific laws also led to the notion of "natural law" as the authority behind laws governing men in their society. Why should man obey these laws? Not because failing to obey them would unleash the wrath of God, but because tyranny, corruption and an unnatural state would result if man did not obey "natural law." Such an idea stood behind the American break from Britain in 1776 and the American Declaration of Independence and the Constitution. Such terms as "naturally" and "of course" express this idea.

From about 1800 to the present, the authority of law is seen to reside in man himself and his or his group's interests and desires, rather than in God or nature. Laws are the result of human action as more and more people in society are able to participate in the political process (through the vote and various voluntary associations) and thus influence legislation. If God or nature is not behind the laws, why should people obey them? If they do not obey the laws, the will of the majority, the sense of the community and the social fabric of the society will be destroyed. Such an idea of law depends on social conformity and consensus for its own sake rather than obedience to a higher power or a clear reading of nature by man's faculties of reason. This is a more secular idea of law than either of the two discussed above. It reflects the values of a more secular society than either of them.

HOW THE CONTENT OF LAW REVEALS CHANGING SOCIAL AND ECONOMIC VALUES

Just as the notion of the authority behind law has changed over time to reflect man's changing ideas and social structure, so the content of law itself has changed accordingly. Three examples from American history will suffice to show this: drug laws, blue laws and vagrancy laws (in Kansas). The Harrison Narcotic Act was passed in 1914. This law made it a crime to sell or possess narcotics in the United States. Thus, if you had or sold narcotics in 1913 (and many drug stores sold patent medicines which contained opium) you were not

committing a crime. If you did the same thing in 1915 you were. The "Blue Laws" likewise made it illegal to sell goods on Sunday in some states, while doing precisely the same thing in other states was no crime at all. Until recently this was the case right here in the Kansas City area, with the act of selling on Sunday a crime in Jackson County, Missouri, but not in neighboring Johnson County, Kansas. (The reverse applies to the sale of liquor by the drink in the two counties.) Kansas has a vagrancy law whereby anyone over eighteen years of age without visible means of support can be arrested for vagrancy. This is not the case in many other states. It is possible for a police trainee over eighteen without a job to be a vagrant. Thus we should be aware of the relative and changing nature of law. Laws in turn create criminal populations, and as laws themselves change, the criminal populations change. A vagrant in Kansas may not be vagrant in Wisconsin. We cannot go into the history of drug laws and "Blue Laws" at this time, but let us look at the history of the vagrancy laws, first in England and then in the United States, to see how in their development the laws reflected changing social and economic values and how the history of vagrancy as a crime exemplifies the relative nature of law and criminal populations.

THE HISTORY OF VAGRANCY LAWS IN ENGLAND

The term vagrancy comes from the Latin "vagari," meaning to wander. As we pointed out above, wandering was no crime in the middle ages (prior to 1274), and in fact was expected of many people carrying out their religious duties as pilgrims and monks. Moreover, the wandering poor gave others in the society an opportunity to demonstrate their charity. Yet in England in 1274 a law was passed which stated that ". . . none shall come to eat or lodge in any house of religion. . . ." Here was a statute in contradiction of the Pauline injunction to be charitable. We can see as early as the thirteenth century how secular

considerations were intruding themselves into the law of Scripture. Why was this law passed? Because of the depredations of the black plague in the thirteenth century; as a result, houses of religion, ". . . have been greatly hindered and impoverished . . . and cannot maintain themselves, nor such charity as they have been accustomed to do." Thus, the time honored acts of charity were too great an economic burden for the houses of religion to keep up, and a law was passed to prohibit those in need from exercising their traditional rights.

The statute of 1274 led the way to the first actual vagrancy law passed in England in 1349. In essence, the statute said the following:

1. It is a crime to give alms to able bodied men and women under sixty years of age without means of support.
2. No one shall leave the town where he spent the winter to find work elsewhere in the summer if there is work for him in the town where he wintered (as amended in 1351).
3. Workers shall receive a standard wage.

Why was this law passed when it was? The decimation of the population by the black plague brought about a shortage of labor. Towns were beginning to recover and expand at this time and attracted labor at a higher rate of pay than the agricultural landowner was able or willing to pay. Yet he also needed labor for his manor. Thus, in order for the landowners to keep labor on the land for lower wages than that of the town, the first vagrancy law was passed to keep laborers from travelling to the places where they could receive the higher wages. In other words, the first vagrancy law was a way of keeping wages down, making potential criminals of those whose "crime" was seeking higher wages. The penalties for vagrants were harsh. In 1360 the vagrant could be imprisoned for fifteen days. In 1388 he could be put in the stocks. In 1495 he could be put

in the stocks for a three day period and fed only bread and water. The vagrancy law was not uniformly applied. It was applied selectively and when most needed for economic reasons.

By the sixteenth century when trade was on the increase with the growth of commercial capitalism, and the itinerant trader travelled England's highways with little protection for himself or his wares, the vagrancy laws changed. Now they applied to "all idle persons going about, some of them using divers (sic) and subtle crafty and unlawful games and plays. . . ." The vagrancy laws attempted to clear the highways of those who might endanger the traders and commerce rather than to keep down wages as in earlier times. Stiff penalties were imposed from two days of whipping to having one's ear cut off, to branding and death.

By the eighteenth century, when the guilds fell on hard times and the practice of apprentices' "tramping" to other towns looking for work lost its respectability, the vagrancy laws were used against those ". . . wandering abroad, and lodging in ale-houses, barns, outhouses, or in the open air, not giving good account of themselves." Now the law was used as a means of keeping outsiders out of a settled community rather than keeping down wages or protecting traders as before. In France in the 1760's and 1770's similar vagrancy laws were passed, and the police were given rewards for apprehending all vagrants. Yet in France as in England in times past begging had been perfectly acceptable as part of the charitable obligation. In France, one of the means of establishing the guilt of a beggar not caught in the act of begging was to find large numbers of liards, small coins given primarily to beggars. Thus, a person wearing the garb of another region and having many liards on his person could be arrested as a beggar or vagrant in eighteenth century France.

From the fourteenth to the eighteenth century in England and later in

France the vagrancy laws were used to do the following:

1. Keep wages down.
2. Protect trade and traders.
3. Maintain social solidarity and homogeneity of communities at a time when it was not profitable for labor to be mobile, and the lack of economic opportunity made the itinerant laborer or beggar a potential social threat.

Thus, a group of people were seen as criminal whose only "crime" was seeking work or having a "questionable" status in the context of the community in which they were found. Here we can see how social and economic concerns of society came to outweigh religious concerns.

VAGRANCY LAWS IN THE AMERICAN COLONIES AND THE UNITED STATES

The vagrancy laws in the American colonies were similar to those in seventeenth and eighteenth century England. They were designed to maintain social solidarity and social control over the community and to keep down the number of outsiders who might need poor relief, which was supplied by the local government. In addition, the Puritan idea that "the devil makes work for idle hands," gave a moral and religious purpose to the harsh treatment of vagrants who were seen as idlers. It is easy to understand how a society as short of labor as American colonial society, had little tolerance for those who seemed unwilling to work. If a newcomer came to a New England town, he could settle there only if jobs were available. Schools and churches were closed to transients, and in some cases, if transients did want to use these community institutions, they had to pay twice what a resident did for their upkeep. The purpose of these vagrancy laws was twofold:

1. Keep out loafers who would burden the poor rolls.
2. Keep out those who were considered morally undesirable.

This second category included such people as "healthy beggars, loiterers, unauthorized lodgers, nightwalkers, dissolute misspenders of time, prostitutes, drunkards, lewd or lascivious persons, nonsupporters of dependents, charlatans, window peepers, common brawlers, expelled nonresidents, and gamblers," among others. (See "The Vagrancy Concept Reconsidered: Problems and Abuses of Status Criminality," 37 N.Y.U. Law Review 102, 109-111 (1962), quoted in Christopher Smith listed in the bibliography.)

The vagrancy laws of the nineteenth and twentieth centuries in the United States (including those on the books today) have essentially the same twofold purpose as that discussed above. With westward expansion and the establishment of frontier communities, all hands willing to work were needed, and those who because of their appearance, associates or suspicious past seemed unlikely prospects, were run out of town or arrested as vagrants. Whatever our national constitution says about the rights of the individual and whatever our historical myths say about the importance of geographical mobility, social conformity (as observed by Alexis de Tocqueville), the work ethic and the right of the community to control its population have had precedence in practice. Eccentricity in appearance or habit has not been readily tolerated. Moreover, the idea of human perfectability, which appeared in American society in the mid-nineteenth century, put forward the notion that communities had a right to prevent moral pestilence and protect themselves against those who did not measure up. Instead of taking for granted the idea that society would always have a certain number of "misfits" or those who did not fit in with the generally held expectations of the society, the idea of perfection emerged, which held that communities could purge themselves of those who did not measure up. This idea was expressed in 1837 by a U.S. Supreme Court Justice (Barbour): "We think it is as competent and as necessary for a state to provide precautionary measures against the moral

pestilence of paupers, vagabonds, and possibly convicts, as it is to guard against the physical pestilence, which may arise from unsound and infectious articles imported, or from a ship, the crew of which may be laboring under an infectious disease." (Quoted in Christopher Smith.) This idea of human and social perfectability is expressed in such words as penitentiary and reformatory, two institutions which gained wide acceptance in mid-nineteenth century America, and which were thought to have the power to "make penitent" and "reform" those who had committed crimes.

During the depression of the 1930's, vagrancy laws were enforced against those seeking work in unfamiliar communities. The much hated "Okies" and "Arkies" in California are typical of those who were barred from various California communities because employment was in short supply, and relief rolls and charities were already overburdened. But whereas the California vagrancy law was declared unconstitutional in 1941 (when the depression was over), vagrancy laws in other states are still operative. In Kansas, for instance, the first vagrancy law was passed in 1855 (before statehood), was upheld by the Kansas Supreme Court in 1922 and was revised and incorporated into the state criminal code in 1970. As we discussed above, under this law, if YOU ARE EIGHTEEN OR OLDER AND WITHOUT VISIBLE MEANS OF SUPPORT (i.e., without a steady job) YOU ARE LIABLE TO BE PICKED UP FOR VAGRANCY.

CONCLUSION

As we have discussed above, vagrancy laws are part of a given social and economic situation and have changed over time as social and economic circumstances have themselves changed over time. The first vagrancy laws passed in fourteenth century England actually contravened biblical injunctions in order to keep down wages in the face of population decline. Thereafter, they were used to protect itinerant traders and the growth of commerce. Eventually they

were used to maintain homogeneity and social control over communities and keep down the poor rolls. In the American colonies vagrancy laws were also used as a means of social control and keeping down community costs in a society close to the edge of economic survival. Vagrancy laws have been used as a means of imposing a work ethic on those who seem unwilling to work. (Black codes in the South were indirect attempts to re-impose slavery-like working conditions on Blacks by restricting their movement and punishing them for not working.) Vagrancy laws have also been used as a means of purging the community of what was considered a "moral pestilence," at a time when the idea of human perfectability was widely held. During times of economic depression vagrancy laws have been used to keep out those seeking work when jobs were in short supply. The lip service Americans pay to the rights of the individual and to geographic mobility are contravened by the vagrancy laws which are enforced selectively at times when transient laborers are not wanted or needed by a particular community and against those whose appearance or status rather than their conduct offends members of that community. Vagrancy laws do not reflect moral absolutes. They reflect social and economic circumstances beyond the control of the "vagrant." The crime of vagrancy is a status offense. A vagrant is someone who disturbs us in most cases by his or her presence (as, for instance, the civil rights workers in Mississippi in the 1960's disturbed many Mississippians), by being socially misplaced rather than by doing "evil" deeds. If the vagrant had done "evil" deeds, he could be charged with specific offenses rather than with vague accusations. Thus we see how law is shaped by social considerations and how specific actions may be offenses at one time but not another, or in one place but not in another.

QUESTIONS

1. How have the sources of authority for laws changed over the centuries? What were the assumptions behind:
   a. Biblical law?
   b. Law at the time of the American Declaration of Independence?
   c. Law in mass democratic societies such as that of present day United States?
2. What were the social and economic circumstances at the time of the passage of the 1274 English law prohibiting begging at the houses of religion?
3. How did the above law contravene biblical teachings?
4. What were the social and economic circumstances in fourteenth century England when the first vagrancy law was passed?
5. How had the social and economic circumstances in England changed by the sixteenth century? How were these changes reflected in the sixteenth century vagrancy laws?
6. Describe what happened to the punishments for vagrants in England from the fourteenth to the sixteenth century. Why do you think this may have been the case?
7. What effect did the decline in the position of guilds and apprenticeships have on the vagrancy laws in eighteenth century England and France? How was a vagrant identified in France at this time if he were not caught in the act of begging?
8. Describe the twofold purpose of vagrancy laws passed in the American colonies. How do these laws pertain to the social and economic circumstances at the time? How do they reflect religious ideas of the time?
9. How are vagrancy laws and their selective enforcement related to:
   a. The work ethic?

b. Moral pestilence?

c. Economic depression?

10. On what grounds could you be picked up for vagrancy in Kansas? Do you think this is fair? Why or why not?

11. What contradictions exist between the U.S. Constitution and the vagrancy laws? Explain why these contradictions exist.

12. As a police officer, do you think there is anything you can do to change the vagrancy law in Kansas? Do you want to change it? Why or why not?

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An excellent discussion of vagrancy laws generally and that of Kansas in particular. Gives good historical background and excellent references to vagrancy cases.

GENERAL SUGGESTIONS

Transcripts of vagrancy cases for special student projects

Simulation games pertaining to vagrancy

Films on vagrancy

Possible vagrancy cases to study:

Goldman v. Knecht, 295 F Supp. 897 (D. Colo., 1969)

Lanzetta v. N.J., 306 U.S. 451 (1939)

Baker v. Binkder, 274 F Supp. 658 (W.D. Ky. 1967)

Lazarus v. Faircloth, 301 F Supp. 266 (S.D. Fla. 1969)

Winters v. N.Y., 333 U.S. 507, 540 (1948)

Robinson v. California, 370 U.S. 660 (1962)

Duncan v. Louisiana, 391 U.S. 145, 169 (1968)

Shuttlesworth v. City of Birmingham, 382 U.S. 87 (1965)

Fenster v. Leary, 20 N.Y. 2nd 309 229 N.E. 2nd 426, 282 N.Y.S. 2nd, 739 (1967)

Thompson v. Burton, 117 Mo. 38, 22 S.W. 863 (1893)

Ricks v. District of Columbia, 414 F 2nd 1097 (D.C. Cir. 1968)

THE HISTORY OF THE LONDON METROPOLITAN POLICE FORCE AND THE AMERICAN URBAN POLICE: SOME COMPARISONS AND CONTRASTS

THE ENGLISH BACKGROUND

The London metropolitan police force was founded in 1829 under the Prime Ministership of Sir Robert Peel (hence the name "Peelers" and "Bobbies" for the police). Before that time London was policed by part-time constables appointed (or in some cases elected) for short terms and paid by fees collected from fines. These constables, like their counterparts in the United States, were not trained, but were regular citizens merely performing their civic duty. Detectives and others offering professional services were for private hire and usually collected their fees by keeping a portion of the stolen goods they were retained to retrieve. The amateur constables played no part in this process, however.

Why were the London metropolitans organized into a professional force at this time? From the 1780's there had been outbreaks of social unrest in London, starting with the anti-Catholic Gordon Riots. Fear took hold of many Englishmen at the outbreak of the French revolution. They feared a similar situation might occur in England. This idea was expressed by Edmund Burke in his Reflections on the French Revolution (1791). There were several street disturbances between the 1780's and 1829, and many Englishmen of property thought it necessary to have a professional force to control the crowds. We must keep in mind the fact that it was primarily men of substantial means who had the vote at this time, so the only political demonstration available to the majority of the disenfranchised were "out-of-doors" street demonstrations, generally perceived by those of wealth as riots. Thus, the main purpose of organizing a professional police force in London was to protect property. In addition, during the first third of the nineteenth century in England there was a belief in the possibility of

moral reformation of the individual by society. This belief was held by a number of groups, among them the utilitarians and the evangelicals. These and other groups worked together for a series of laws to reform individuals including sabbath observance, temperance reform and the abolition of the slave trade. Many of these reformers thought that a professional police force could act as moral missionaries to those in need of reform, and in addition, act as a preventive force against vice by their very presence. As Edwin Chadwick, a well-known utilitarian reformer of the day, commented, "A preventive police would act by placing difficulties in the way of obtaining the objects of temptation." (Quoted by Richardson, p. 12, see bibliography.) Thus, the London metropolitan police force was founded as a paid, full-time, highly trained and uniformed professional police force for two main reasons:

1. To maintain order and protect the property of the well-to-do against the depredations of the feared London "mob."
2. To help bring about the moral reformation of the lower classes by example and prevention, at a time when belief in the possibility of reforming human nature was at a high point.

HOW THE LONDON METROPOLITANS WORKED

London was the court city, the center of King and Parliament, the seat of the national government. The London metropolitan force was an arm of the national government; it was not locally controlled by the city of London. It was a national police force brought into being to protect London, the national capital. (On occasion it was used in other cities when riots occurred, but this practice was generally unpopular.) Given the hierarchical class structure of English society in the 1820's, the London metropolitans were, in essence, created to protect a small and politically powerful elite against a lower class majority. The elite felt threatened by the demonstrations of this

disenfranchised majority. Thus, the problem faced by the London metropolitans was how to assert the authority of a minority over the majority without resort to repression. (Repression would have gone against the English common law tradition of protecting civil liberties.) The problem was solved as follows: The London metropolitans were:

1. To derive their power from the national sovereign state and thus gain legitimacy from the nation itself rather than from a local jurisdiction.
2. To show respect for the civil liberties of all by adhering to strict procedural regularity and exercising restraint.
3. To have the police commissioners be independent and above politics by being appointed for life.
4. To convey an image of professionalism by:
   a. Being nonpartisan and not voting in elections.
   b. Being recruited from outside of London.
   c. Wearing uniforms (blue).
   d. Showing strict respect for class distinctions among the population.
   e. Controlling their tempers.
5. To carry no firearms and rely instead on honor, persuasive power and discipline.
6. To exercise limited discretion on the beat, and to leave decisions of justice to court proceedings in which the policeman would have a large role, often acting as public prosecutor.

The intention of all the above was to make the London metropolitans seem as agents impartially carrying out the majestic law of the nation rather than the interests of a small elite. Such an intention was well adapted to a hierarchical society based upon deference and tied to tradition. In sum, the London

metropolitans were to be highly disciplined, insulated from political pressure and local loyalties, institutions rather than men. (Miller makes these points specifically; see bibliography.)

THE AMERICAN BACKGROUND

In American eastern cities in the 1830's and 1840's, crime and disorder seemed to outpace the capability of amateur constables and watchmen to control them. In New York City, there were so many disorders in 1834 that it was known as "the year of riots." In New York City the number of Irish immigrants arriving in the 1830's was four times that of the 1820's. In Boston the respective numbers doubled. Immigration increased even more in the 1840's. Signs began appearing which said "Irish need not apply." To many native and nativist Americans the Irish were a clan of poverty stricken, unwashed, drunk papists who crowded into what once were pleasant neighborhoods and depressed wages. As far as many New Yorkers, Bostonians and Philadelphians were concerned, the "Irish scum" and "thieving rascals" had to be controlled if order and decency were to prevail. During the 1830's and 1840's, lootings as well as anti-Irish, anti-Negro, and anti-abolitionist riots occurred. The necessity of organizing a professional police force won out over earlier resistance to it on the grounds that such a force would be a threat to liberty and constitute a standing army. With the London example in mind, New York City organized its first professional police force in 1845. It remained un-uniformed for several years, so hated was the idea of a standing army. Philadelphia followed in 1848, Boston in 1854, Milwaukee in 1855 and Kansas City in 1874.

COMPARISONS AND CONTRASTS BETWEEN AMERICAN URBAN POLICE AND THE LONDON METROPOLITANS

As we have already discussed, the London metropolitans were organized as an impersonal, professional, highly disciplined paramilitary force insulated

from politics and local control. Although modeled on the London force, American police departments reflected a different image and served a different constituency. While American forces, like their London counterparts, were now full-time, trained, paid and professional, they did not have the obligation of protecting a small elite against what were perceived as threats by a dangerous majority. On the contrary, American police forces represented a majority (by this time the voting franchise was virtually open to all white males of age, since property qualifications had been eliminated), against what was seen as an alien and disruptive minority, whether Irish, abolitionist or Black. Thus, by contrast with his London counterpart, the American urban policeman was:

1. Personal rather than impersonal in his embodiment of authority; he was a man rather than an institution.
2. Close to the citizenry of his community rather than insulated from it; he was thought to express the will of his community, the will of the majority by:
   a. Being elected by his local community or under the control of those elected, such as the mayor, or in some cases the governor.
   b. Carrying out the will of the community by not enforcing unpopular laws and by enforcing local mores by wide discretion ("street justice") even if not formally expressed in law.
   c. Being recruited from the community he patrolled. (In fact, as more Irish settled into urban communities, the Irish came to dominate many police forces.)
3. Less important in the judicial process than his London counterpart and thus more prone to take the law into his own hands on the beat to ensure meting out some kind of "justice." (In 1867 the New York Times complained that the individual policeman was becoming "an absolute monarch.")

Harriet Martineau, the famed British traveller to the United States, contrasted the London and New York police by calling the former "agents of a representative government, appointed by responsible rulers for the public good," and the latter "servants of a self-governing people, chosen by among whom their work lies." (Quoted by Miller.)

CONCLUSION

Because of their different history and tradition, the American urban police differ from the London metropolitans, although the latter provided Americans with their model. American police had to respond to their more egalitarian and community based society, often subject to corruption and political control. If this is understood, the American problems of boss control, patronage, selective enforcement of the law, and even police brutality can be seen as deriving from the American political context. Attempts to reform the American urban police should take account of this history. Perhaps the cure for these ills is more democracy rather than insulating the police from the public. Perhaps police brutality would be less of a problem in Black communities if there were more Black policemen. Perhaps police forces would be seen as more responsive to the problem of rape if there were more women on the force. Perhaps the police would seem more responsive to the community as a whole if the community took a more active part in the governance of the police and the shaping of the laws within which they operate.

QUESTIONS

1. Describe the conditions which gave rise to the London metropolitan police force.
2. What was the major problem which the metropolitans had to face in policing an unenfranchised majority?

3. What were the characteristics of the London metropolitans when they were founded?

4. How did the London metropolitans fit in with British traditions?

5. Describe the conditions which gave rise to American urban police forces in New York and Boston.

6. What are the major characteristics of American urban police forces of the nineteenth century?

7. Compare and contrast the London metropolitans and American urban police forces.

8. Describe the advantages and disadvantrages of each.

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